

which Captain Mayo was to pay interest was ascertained to be \$2702 10, and the half yearly interest, being \$81 06, he was to pay on the 16th of May and November, of each year, so long as Mrs. Bland should live.

By this statement it appeared that the books in which Mrs. Bland had a life-estate, produced \$1270. The cash on hand, and arrears of salary due deceased amounted to \$851 50, and that the carriage and horses produced \$600, amounting in all to \$2722 10, from which there was deducted a fee of \$20, leaving a sum of \$2702 10, as the amount upon which interest was to be paid.

I do not think that by any fair construction of this agreement it can be maintained that Captain Mayo intended to run the risk of the inadequacy of the Virginia fund, to pay the debts of the deceased. He could not then, on the 4th of March, 1847, have known the actual condition of the estate, and it would require very plain language to induce any court to believe that under these circumstances he designed assuming upon himself the whole risk of a deficiency.

Of the sum upon which he agreed to pay interest during the life of Mrs. Bland, eight hundred and fifty-one dollars, being nearly one-third of the whole amount, consisted of cash and arrears of salary, in regard to which no possible doubt could be entertained that it was responsible for the payments of debts, there being no pretence that the bequest of it was specific, whatever may be thought of the bequest of the books and other articles of personal property sold. The plain sense of the agreement is, that the property bequeathed Mrs. Bland should be sold and applied in anticipation of the receipt of the funds expected from Virginia, and as it was supposed those funds would be sufficient to pay the claims of creditors, it was agreed that the executor should pay Mrs. Bland interest upon so much of her money as was taken to pay creditors, and be himself reimbursed out of the Virginia fund when received. If Mayo intended in any event to assume to pay Mrs. Bland interest on the amount of sales, &c., and incur the risk of the sufficiency of the Virginia fund, why was it stipulated that he should be substituted as